

HR Weekly Podcast
10/19/07

Today is October 19, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns recent congressional developments concerning the Americans with Disabilities Act or the ADA.

In 1990, the United States Congress enacted the ADA. The purpose of the ADA was to prohibit private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

Currently, there is a debate over the interpretation of the definition of "disability" which has consequently led to numerous lawsuits in lower courts as well as the United States Supreme Court. The ADA adopted the structure and definition of disability from Section 504 of the Rehabilitation Act which defines disability with respect to an individual as:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment

Many lawmakers and advocacy groups consider that courts have traditionally interpreted the ADA more narrowly than Congress intended and, as a result, many people have lost the ability to bring their case forward. House Majority Leader Steny H. Hoyer of Maryland states: "Courts have ruled that medication or other corrective measures have made ADA claimants 'too functional' to be considered 'disabled' under the law. This is not what Congress intended when it passed the ADA." He further states, "We intended a broad application of this law. Simply put, the point of the ADA is not disability, it is the prevention of wrongful and unlawful discrimination."

On July 26, 2007, legislation known as "The Americans With Disabilities Restoration Act of 2007" was introduced in the United States House of Representatives to restore the broad reach of the ADA. And, it is anticipated that similar legislation will be introduced in the United States Senate. On Thursday, October 4, 2007, the United States House Judiciary Subcommittee on the Constitution heard testimony about the pending legislation.

The new bill is intended to address problems within several sections of the original ADA. The bill includes 3 major changes to the definition of disability in section 4. First, the new bill would eliminate the "substantial limitation" on a "major life activity" requirement. Second, the new bill would define the terms used in the definition of disability, such as "physical impairment" and "mental impairment. And, last, the new bill would add a rule of construction to the definition of disability, which prohibits courts from considering whether a person uses mitigating measures or considering whether the manifestations of an impairment are "episodic, in remission, or latent" when determining if a person has an impairment. The rule of construction would also define mitigating measures, which is not defined in the ADA or in the Equal Employment Opportunity Commission regulations. Finally, the rule of construction would clarify that adverse treatment based on the mitigating measure itself or a side effect of the mitigating measure, for example, a person's prosthetic limb or a person's fatigue due to medicine, constitutes discrimination.

In addition, the new bill would make changes to Title I Discrimination found in sections 5 and 6. Currently, the ADA, which is consistent with Section 504, provides that: "No covered entity shall discriminate against a qualified individual with a disability...." The ADA Restoration Act of 2007 will introduce language that is more consistent with the Civil Rights Act of 1964 and other civil rights laws that prohibit discrimination "on the basis of race, color, religion, national origin, and sex." This change places the focus on whether a person who has been discriminated against has proven that the discrimination was based on a disability and not on whether or not he or she has proven that the disability exists.

The ADA Restoration Act of 2007 could substantially affect future litigation under the ADA. OHR will update you regarding any potential changes that may occur to the ADA. If you have any questions about the ADA or the ADA Restoration Act of 2007, please contact your OHR consultant at 737-0900.

Thank you.